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REMARKS

DEC 18 2006

In the Office Action mailed August 30, 2006, the Examiner rejected all of the pending claims under either 35 U.S.C. § 101 or § 102. Applicants respectfully traverse these rejections and request reconsideration.

I. Response to § 101 Rejections

The Examiner rejected claims 1, 2, 4, 6, 11-15, 19, 21, 23, 24, 26, 29, 32, 34, 36-38, and 41- 45 under 35 U.S.C. § 101 as being directed toward non-statutory subject matter. Though all of these claims do involve the participation of a human listener, and possibly a human speaker, no human person falls within the reasonable scope of the claims. These claims are similar to those in the pharmaceutical arena directed toward medical treatments; any mention of a human in the claims serves only to put the claim elements in their proper context and not to place a sick person within the scope of the claims.

Additionally, on October 26, 2005, the Patent Office released Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility ("Interim Guidelines") that disallow this type of subject matter rejection. In the Interim Guidelines, within a discussion of improper tests for determining statutory subject matter, the Patent Office stated that:

It is immaterial whether the process may be performed by some or all steps that are carried out by a human. Claims are not directed to non-statutory processes merely because **some or all** the steps therein can also be carried out in or with the aid of a human or because it may be necessary for one performing the processes to do some or all of the process steps. The inclusion in a patent of a process that may be performed by a person is not fatal to patentability. . . Therefore, USPTO personnel should no longer rely on the human step test to determine whether a claimed invention is directed to statutory subject matter.

Intermin Guidelines at p. 47 (emphasis in original, internal citations omitted). The intelligibility measurement of the present claims requires a human listener because intelligibility, as described in the specification, only has meaning in the context of a human hearing speech. Applicants' Specification, p. 2, lines 12-20. Accordingly, these claims are directed toward allowable subject matter, and the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 101.

II. Response to § 102(b) Rejections

The Examiner also rejected claims 1, 5, 7-11, 16-24, 28, 33-36, 38, 40, and 45 under 35 U.S.C. § 102(b) as being anticipated by U.S. Pat. No. 4,783,803 ("Baker"). Baker is concerned with an improvement to speech recognition systems. (See, e.g., Baker, col. 5, lines 38-41). The Examiner does not even assert that Baker's teachings disclose the first element of claim 1, "a human listener that hears a speaker who is repeating items and repeats aloud what is heard, wherein the listener does not know a text of the items the speaker repeated prior to hearing the speaker repeating the items," or the analogous elements of the other independent claims. The Applicants respectfully assert that any anticipation rejection that does not cover all the elements of the rejected claim is legally insufficient.

Furthermore, though Baker extensively discusses the interaction between a speaker and a speech recognition system, Baker explicitly teaches away from a human *listener* participating in the system:

The [mu] and [sigma] for each parameter of each node in a word model can be derived by statistical techniques. For example a plurality of utterances of a given word can be divided into a plurality of nodes by a **human listener** playing back a recording of each word at a slow pace. Then the value of [mu]

and [sigma] can be calculated for each node by standard statistical techniques. Although this method yields good results, it is **very time consuming**. Fortunately, **more efficient automatic method (sic)** of deriving node models has been developed in the prior art.

Baker, col. 16, lines 58-68 (emphasis added).

Additionally, the Examiner misconstrues Baker as teaching other elements of the claims. Though Baker does discuss an operator reviewing the system's recognition of his or her speech, (col 45, line 54 – col. 46, line 4), this is not the automatic comparison of the text and the transcript in the present claims. In Baker, the operator is a person, (see, e.g., col. 41, lines 46 - 50), whereas in the present invention the comparison is machine-based. Additionally, even if the speech recognition system output of Baker were considered a text, this would not anticipate the combined use of both the transcription and the text, as claimed.

Moreover, Baker does not teach an intelligibility measurement. A computer understanding speech and a human understanding speech are different problems requiring different solutions. The present claims are directed towards using a human listener's repetition to score a speaker's intelligibility. In contrast, Baker is only directed to aiding a computer's understanding of speech. The present independent claims all include a human listener, an automatic comparison, and an intelligibility measurement, none of which are shown or suggested by Baker. Accordingly, the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102.

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CONCLUSION

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In light of the above remarks, the Applicants submit that the present application is in condition for allowance and respectfully request notice to this effect. The Examiner is requested to contact the Applicants' representative below if any questions arise or if she may be of assistance to the Examiner.

Respectfully submitted,

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